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AUG 0 8 2017

August 1, 2017

Western Tube and Conduit Corporation Attn: Kevin Carroll, Process Engineer 2001 E Dominguez St Long Beach, CA 90801	Western Tube & Conduit Corporation c/o C T Corporation System, Agent for Service of Process 818 W. 7th St., Ste. 930 Los Angeles, CA 90017
Western Tube & Conduit Corporation Attn: General Counsel 227 W. Monroe St., Ste. 2600 Chicago, IL 60606	Western Tube and Conduit Corporation Attn: Kevin Carroll, Legally Responsible Person 2001 East Dominguez Street, Carson, CA 90801
Administrator U.S. Environmental Protection Agency Mail Code: 1101A 1200 Pennsylvania Avenue, N.W. Washington, DC 20460	Executive Officer Regional Water Quality Control Board Los Angeles Region 320 West Fourth Street, Suite 200 Los Angeles, CA 90013
Acting Regional Administrator U.S. EPA, Region 9 75 Hawthorne Street San Francisco, CA 94105	Executive Director State Water Resources Control Board 1001 I Street Sacramento, CA 95814

Re: Notice of Violation and Intent to File Suit under the Clean Water Act

To Whom It May Concern:

Brodsky & Smith, LLC ("Brodsky Smith") represents Personal Privacy 6 a citizen of the State of California. This letter is to give notice that Brodsky Smith, on Personal Privacy 6 behalf, intends to file a civil action against Western Tube & Conduit Corporation ("Western Tube") for violations of the Federal Water Pollution Control Act, 33 U.S.C. § 1251 *et seq.* ("Clean Water Act" or "CWA") at Western Tube's facility located at 2001 E. Dominguez St., Long Beach, CA 90801 (the "Facility").

Personal Privacy is a citizen of the State of California who is concerned with the environmental health the Dominguez Channel, and uses and enjoys the waters of the Dominguez Channel, its inflows, and other areas of the overall Dominguez Watershed, of which the Dominguez Channel is a part, and the San Pedro Bay, into which the Dominguez Channel flows. Personal Privacy 6 use and enjoyment of these waters are negatively affected by the pollution caused by Western Tube's operations. Additionally, Personal Privac acts in the interest of the general public to prevent pollution in these waterways, for the benefit of their ecosystems, and for the benefits of all individuals and communities who use these waterways for various recreational, educational, and spiritual purposes.

This letter addresses Western Tube's unlawful discharge of pollutants from the Facility via indirect flow into the Dominguez Channel and the overall Dominguez Watershed, and the San Pedro Bay.[1] Specifically, investigation of the Facility has uncovered significant, ongoing, and continuous violations of the CWA and the National Pollutant Discharge Elimination System ("NPDES") General Permit No CAS000001 [State Water Resources Control Board] Water Quality Orders No. 2014-0057-DWQ (the "Industrial Stormwater Permit") and 92-12-DWQ (as amended by Order No. 97-03-DWQ) (the "Previous Industrial Stormwater Permit").[2]

CWA section 505(b) requires that sixty (60) days prior to the initiation of a civil action under CWA section 505(a), a citizen must give notice of his or her intent to file suit. 33 U.S.C. § 1365(b). Notice must be given to the alleged violator, the U.S. Environmental Protection Agency ("EPA"), and the State in which the violations occur. As required by section 505(b), this Notice of Violation and Intent to File Suit provides notice to Western Tube of the violations that have occurred and which continue to occur at the Facility. After the expiration of sixty (60) days from the date of this Notice of Violation and the Intent to File Suit, Personal Privacy intends to file suit in federal court against Western Tube under CWA section 505(a) for the violations described more fully below.

During the 60-day notice period, Personal Privac is willing to discuss effective remedies for the violations noticed in this letter. We suggest that Western Tube contact Personal Privacy 6 attorneys at Brodsky & Smith within the next twenty (20) days so that these discussions may be completed by the conclusion of the 60-day notice period. Please note that we do not intend to delay the filing of a complaint in federal court, and service of the complaint shortly thereafter, even if discussions are continuing when the notice period ends.

I. THE LOCATION OF THE ALLEGED VIOLATIONS

A. The Facility

Western Tube's Facility is located at 2001 E. Dominguez St., Long Beach, CA 90801. At the Facility, Western Tube operates as a manufacturer of steel, aluminum, and galvanized steel tube and conduit. At the Facility, the following industrial activities occur: (i) use of air compressors; (ii) storage of chemicals, conduit, and galvanized tube; (iii) production of steel, aluminum, and galvanized steel tube and conduit; (iv) metal skimming; (v) metal milling; (vi) metal threading; (vii) welding; (viii) hazardous waste storage; and (ix) shipping and receiving. Other activities carried out in the regular course of business at the facility include storage of fuel and other oils, maintenance, equipment storage, and waste storage. Repair and maintenance activities carried out at the facility include, but are not limited to, electrical, plumbing, roofing, asphalt, concrete, and utilities repairs as well as janitorial duties. Possible pollutants from the Facility include total suspended solids ("TSS"), waste oils, lubricants, fuel, trash, debris, hazardous materials, oil and grease, pH, heavy metals such as zinc, aluminum, as well as other pollutants. Stormwater from the Facility discharges, indirectly, into the Dominguez Channel.

B. The Affected Water

The Dominguez Channel, overall Dominguez Watershed, and San Pedro Bay are waters of the United States. The CWA requires that water bodies such as the Dominguez Channel, overall Dominguez

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[1] Western Tube's Notice of Intent ("NOI") filed with the Los Angeles Regional Water Quality Control Board ("LARWQCB") lists the receiving waters of the Facility as the "Dominguez Channel" via indirect flow. Upon investigation, it is Personal Privacy 6 knowledge and belief that the most immediate receiving water of the Facility is the Dominguez Channel, via indirect flow, and that the Dominguez Channel is a part of the Dominguez Watershed, and that the Dominguez Channel flows into the San Pedro Bay.

[2] On April 1, 2014, the State Water Resources Control Board adopted an updated NPDES General Permit for Discharges Associated with Industrial Activity, Water Quality Order No. 2014-57-DWQ, which has taken force or effect on its effective date of July 1, 2015. As of the effective date, Water Quality Order No. 2014-57-DWQ has superseded and rescinded the prior Industrial Stormwater Permit except for purposes of enforcement actions brought pursuant to the prior permit.

Watershed, and San Pedro Bay meet water quality objectives that protect specific "beneficial uses." The beneficial uses of the Dominguez Channel, overall Dominguez Watershed, and San Pedro Bay include commercial and sport fishing, estuarine habitat, fish migration, navigation, preservation of rare and endangered species, water contact and non-contact recreation, shellfish harvesting, fish spawning, and wildlife habitat. Contaminated stormwater from the Facility adversely affects the water quality of the Dominguez Channel, overall Dominguez Watershed, and San Pedro Bay and threatens the beneficial uses and ecosystem of these watersheds, which includes habitats for threatened and endangered species.

II. THE FACILITY'S VIOLATIONS OF THE CLEAN WATER ACT

It is unlawful to discharge pollutants to waters of the United States, such as the Dominguez Channel, without an NPDES permit or in violation of the terms and conditions of an NPDES permit. CWA § 301(a), 33 U.S.C. § 1311(a); *see also* CWA § 402(p), 33 U.S.C. § 1342(p) (requiring NPDES permit issuance for the discharge of stormwater associated with industrial activities). The Industrial Stormwater Permit authorizes certain discharges of stormwater, conditioned on compliance with its terms.

Western Tube has submitted a Notice of Intent ("NOI") to be authorized to discharge stormwater from the Facility under the Industrial Stormwater Permit since as early as 1993. However, information available to Personal Privac indicates that stormwater discharges from the Facility have violated several terms of the Industrial Stormwater Permit and the CWA. Apart from discharges that comply with the Industrial Stormwater Permit, the Facility lacks NPDES permit authorization for any other discharges of pollutants into waters of the United States.

A. Discharges in Excess of BAT/BCT Levels

The Effluent Limitations of the Industrial Stormwater Permit prohibit the discharge of pollutants from the facility in concentrations above the level commensurate with the application of best available technology economically achievable ("BAT") for toxic pollutants[3] and best conventional pollutant control technology ("BCT") for conventional pollutants.[4] Industrial Stormwater Permit § I(D)(32), II(D)(2); Previous Industrial Stormwater Permit, Order Part B(3). The EPA has published Benchmark values set at the maximum pollutant concentration present if an industrial facility is employing BAT and BCT, as listed in Attachment 1 to this letter.[5] These benchmark values are reiterated and incorporated into the Industrial Stormwater Permit. *See* Industrial Stormwater Permit § XI(B) Tables 1-2.

Additionally, the Previous Industrial Stormwater Permit notes that effluent limitation guidelines for several named industrial categories have been established and codified by the Federal Government. *See* Previous Industrial Stormwater Permit pp. VIII. The Previous Industrial Stormwater Permit mandates that for facilities that fall within such industrial categories, compliance with the listed BAT and BCT for the specified pollutants listed therein must be met in order to be in compliance with the Previous Industrial Stormwater Permit. *Id.* Western Tube falls within these named industrial categories and it must have complied with the effluent limitations found therein in order to have been in compliance with the Previous Industrial Stormwater Permit during its effective period. In addition, the Industrial Stormwater Permit requires dischargers to comply with Effluent Limitations "consistent with U.S. EPA's 2008 Multi Sector General Permit for Stormwater Discharges Associated with Industrial Activity (the "2008 MSGP")". *See*

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[3] BAT is defined at 40 C.F.R. § 437.1 *et seq.* Toxic pollutants are listed at 40 C.F.R. § 401.15 and include copper, lead, and zinc, among others.

[4] BCT is defined at 40 C.F.R. § 437.1 *et seq.* Conventional pollutants are listed at 40 C.F.R. § 401.16 and include BOD, TSS, oil and grease, pH, and fecal coliform.

[5] The Benchmark values are part of the EPA's Multi-Sector General Permit ("MSGP") and can be found at: http://www.epa.gov/npdes/pubs/msgp2008_finalpermit.pdf. *See* 73 Fed. Reg. 56, 572 (Sept. 29, 2008) (Final National Pollutant Discharge Elimination System (NPDES) General Permit for Stormwater Discharges From Industrial Activities).

Industrial Stormwater Permit § I(D)(33). The 2008 MSGP has specific numeric effluent limitations based upon Standard Industrial Classification ("SIC") codes. Furthermore, these SIC code based benchmark values are reiterated and incorporated into the Industrial Stormwater Permit. *See* Industrial Stormwater Permit § XI(B) Tables 1-2.[6] Notably, Western Tube is classified as falling under SIC Code 3317, relating to steel pipe and tubes, requiring it to be within numerical effluent limitations for (i) pH; (ii) Oil and Grease; (iii) Total Suspended Solids; (iv) Total Aluminum; and (v) Total Zinc. Based on Western Tube's self-reporting data and/or lack thereof, Western Tube has not met this requirement and was in violation of the Previous Stormwater Permit over a period of approximately five (5) years.

Western Tube's self-reporting of industrial stormwater discharges and/or lack thereof show a pattern of exceedances of Benchmark values and/or a failure to adequately monitor numerical pollutant discharge values in every instance of self-reporting. *See* Attachment 2. This pattern of a exceedances of benchmark values and/or a lack of self-reporting indicate that Western Tube has failed and is failing to employ measures that constitute BAT and BCT in violation of the requirements of the Industrial Stormwater Permit and Previous Industrial Stormwater Permit. Personal Privacy alleges and notifies Western Tube that its stormwater discharges from the Facility have consistently contained and continue to contain levels of pollutants that exceed benchmark values for pH, O&G, TSS, Aluminum and/or Zinc, including annual NAL overages for TSS, Aluminum, and/or Zinc.

Western Tube's ongoing discharges of stormwater containing levels of pollutants above EPA Benchmark values and BAT and BCT based levels of control also demonstrate that Western Tube has not developed and implemented sufficient Best Management Practices ("BMPs") at the Facility. Proper BMPs could include, but are not limited to, moving certain pollution-generating activities under cover or indoors capturing and effectively filtering or otherwise treating all stormwater prior to discharge, frequent sweeping to reduce build-up of pollutants on-site, installing filters on downspouts and storm drains, and other similar measures.

Western Tube's failure to develop and/or implement adequate pollution controls to meet BAT and BCT and the Facility violates and will continue to violate the CWA and the Industrial Stormwater Permit each and every day Western Tube's discharges stormwater without meeting BAT/BCT. Personal Privacy alleges that Western Tube has discharged stormwater containing excessive levels of pollutants from the Facility to the Dominguez Channel during at least every significant local rain event over 0.2 inches in the last five (5) years.[7] Attachment 3 compiles all dates in the last five (5) years when a significant rain event occurred. Western Tube is subject to civil penalties for each violation of the Industrial Stormwater Permit and the CWA within the past five (5) years.

B. Discharges Impairing Receiving Waters

The Industrial Stormwater Permit's Discharge Prohibitions disallow stormwater discharges that cause or threaten to cause pollution, contamination, or nuisance. *See* Industrial Stormwater Permit § III; Previous Industrial Stormwater Permit, Order Part A(2). The Industrial Stormwater Permit also prohibits stormwater discharges to surface or groundwater that adversely impact human health or the environment. *See* Industrial Stormwater Permit § VI(b)-(c); Previous Industrial Stormwater Permit, Order Part C(1). Receiving Water Limitations of the Industrial Stormwater Permit prohibit stormwater discharges that cause or contribute to an exceedance of applicable Water Quality Standards ("WQS") contained in a Statewide Water Quality Control Plan or the applicable Regional Water Board's Basin Plan. *See* Industrial Stormwater Permit § VI(a); Previous Industrial Stormwater Permit at Order Part C(2). Applicable WQS

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[6] Of note, Western Tube recognizes the requirement to test for these additional SIC code related pollutants, and has explicitly stated it would sample such parameters in every Qualifying Storm Event in which a sampling was taken as part of its Monitoring and Reporting Plan at p. 23 of its most recent SWPPP.

[7] Significant local rain events are reflected in the rain gauge data available at: http://www.ncdc.noaa.gov/cdo-web/search.

are set forth in the California Toxic Rule ("CTR")[8] and Chapter 3 of the Los Angeles Region (Region 4) Water Quality Control Plan (the "Basin Plan").[9] *See* Attachment 1. Exceedances of WQS are violations of the Industrial Stormwater Permit, the CTR, and the Basin Plan.

The Basin Plan establishes WQS for all Inland Surface and Coastal waters of Los Angeles and Ventura Counties, including but not limited to the following:

- Waters shall not contain suspended or settleable material in concentrations that cause nuisance or adversely affect beneficial users.

- Waters shall be free of changes in turbidity that cause nuisance or adversely affect beneficial uses. Increases in natural turbidity attributable to controllable water quality factors shall not exceed 20% where natural turbidity is between 0 and 50 nephelometric turbidity units ("NTU"), and shall not exceed 10% where the natural turbidity is greater than 50 NTU.

- All waters shall be maintained free of toxic substances in concentrations that are toxic to, or that produce detrimental physiological responses in, human, plant, animal, or aquatic life.

- Surface waters shall not contain concentrations of chemical constituents in amounts that adversely affect any designated beneficial use.

Personal Privacy alleges that Western Tube's stormwater discharges have caused or contributed to exceedances of Receiving Water Limitations in the Industrial Stormwater Permit and the WQS set forth in the Basin Plan and CTR. These allegations are based on Western Tube's self-reported data submitted to the Los Angeles Regional Water Quality Control Board. These sampling results indicate that Western Tube's discharges are causing or threatening to cause pollution, contamination, and/or nuisance; adversely impacting human health or the environment; and violating applicable WQS.

Personal Privac alleges that each day that Western Tube has discharged stormwater from the Facility, Western Tube's stormwater has and/or may have contained levels of pollutants that exceeded one or more of the Receiving Water Limitations and/or applicable WQS in the Dominguez Channel, overall Dominguez Watershed, and San Pedro Bay. Personal Privac alleges that Western Tube has discharged stormwater exceeding Receiving Water Limitations and/or WQS from the Facility to the Dominguez Channel, overall Dominguez Watershed, and San Pedro Bay during at least every significant local rain event over 0.2 inches in the last five (5) years. *See* Attachment 3. Each discharge from the Facility that violates a Receiving Water Limitation or has caused or contributed, or caused or contributes, to an exceedance of an applicable WQS constitutes a separate violation of the Industrial Stormwater Permit and the CWA Western Tube is subject to penalties for each violation of the Industrial Stormwater Permit and the CWA within the past five (5) years.

C. Failure to Develop and Implement an Adequate Stormwater Pollution Prevention Plan

The Industrial Stormwater Permit requires dischargers to develop and implement an adequate Storm Water Pollution Prevention Plan ("SWPPP"). *See* Industrial Stormwater Permit, § X(B); Previous Industrial Stormwater Permit § A(1)(a). The Industrial Stormwater Permit also requires dischargers to

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[8] The CTR is set forth at 40 C.F.R. § 131.38 and is explained in the Federal Register preamble accompanying the CTR promulgation set forth at 65 Fed. Reg. 31, 682 (May 18, 2000).

[9] The Basin Plan is published by the Los Angeles Regional Water Quality Control Board at: http://www.waterboards.ca.gov/losangeles/water_issues/programs/basin_plan/basin_plan_documentation.shtml.

make all necessary revisions to existing SWPPPs promptly. *See* Industrial Stormwater Permit, § X(B); Previous Industrial Stormwater Permit at Order Part E(2).

The SWPPP must include, among other requirements, the following: a site map, a list of significant materials handled and stored at the site, a description and assessment of all Western Tube pollutant sources, a description of the BMPs that will reduce or prevent pollutants in stormwater discharges, specification of BMPs designed to reduce pollutant discharge to BAT and BCT levels, a comprehensive site compliance evaluation completed each reporting year, and revisions to the SWPPP within 90 days after a facility manager determines that the SWPPP is in violation of any requirements of the Industrial Stormwater Permit. *See* Industrial Stormwater Permit, § X(A); Previous Industrial Stormwater Permit Section § A.

Based on information available to Personal Privacy Western Tube has failed to prepare and/or implement an adequate SWPPP and/or failed to revise the SWPPP to satisfy each of the requirements of § X(A) of the Industrial Stormwater Permit and/or § A Previous Industrial Stormwater Permit. For Example, Western Tube SWPPP does not include and/or Western Tube has not implemented adequate BMPs designed to reduce pollutant levels in discharges to BAT and BCT levels in accordance with Section A(8) of the Industrial Stormwater Permit, as evidenced by the data in Attachment 2. For example, Western Tube has clearly failed to adequately implement its Monitoring and Reporting Program ("MRP") described in its SWPPP on a consistent basis for a period of at least five (5) annual reporting periods, as evidenced by its lack of proper testing for all required pollutant parameters on a consistent basis.

Accordingly, Western Tube has violated the CWA each and every day that it has failed to develop and/or implement an adequate SWPPP meeting all of the requirements of § X(A) of the Industrial Stormwater Permit and/or § A Previous Industrial Stormwater Permit, and Western Tube will continue to be in violation every day until it develops and implements an adequate SWPPP. Western Tube is subject to penalties for each violation of the Industrial Stormwater Permit and the CWA occurring within the past five (5) years.

D. Failure to Develop and Implement an Adequate Monitoring and Reporting Program and to Perform Annual Comprehensive Site Compliance Evaluations

The Industrial Stormwater Permit requires facility operators to develop and implement a Monitoring and Reporting Program ("MRP"). *See* Industrial Stormwater Permit, § XI; Previous Industrial Stormwater Permit § B(1) and Order Part E(3). The Industrial Stormwater Permit requires that MRP ensure that each the facility's stormwater discharges comply with the Discharge Prohibitions, Effluent Limitations, and Receiving Water Limitations specified in the Industrial Stormwater Permit. *Id.* Facility operators must ensure that their MRP practices reduce or prevent pollutants in stormwater and authorized non-stormwater discharges as well as evaluate and revise their practices to meet changing conditions at the facility. *Id.* This may include revising the SWPPP as required by § X(A) of the Industrial Stormwater Permit and/or §A Previous Industrial Stormwater Permit.

The MRP must measure the effectiveness of BMPs used to prevent or reduce pollutants in stormwater and authorized non-stormwater discharges, and facility operators must revise the MRP whenever appropriate. *See* Industrial Stormwater Permit, § XI; Previous Industrial Stormwater Permit § at Section B. The Industrial Stormwater Permit requires facility operators to visually observe and collect samples of stormwater discharges from all drainage areas. *Id.* Facility operators are also required to provide an explanation of monitoring methods describing how the facility's monitoring program will satisfy these objectives. *Id.*

Western Tube has been operating the Facility with an inadequately developed and/or inadequately implemented MRP, in violation of the substantive and procedural requirements set forth in Section B of the Industrial Stormwater permit. For example, the data in Attachment 2 indicates that Western Tube's monitoring program has not ensured that stormwater dischargers are in compliance with the Discharge Prohibitions, Effluent Limitations, and Receiving Water Limitations of the Industrial Stormwater Permit as required by the Industrial Stormwater Permit, § XI and/or the Previous Industrial Stormwater Permit § B.

The monitoring has not resulted in practices at the Facility that adequately reduce or prevent pollutants in stormwater as required by Industrial Stormwater Permit, § XI and/or the Previous Industrial Stormwater Permit § B. Additionally, the Industrial Stormwater Permit requires dischargers to comply with Effluent Limitations "consistent with U.S. EPA's 2008 Multi Sector General Permit for Stormwater Discharges Associated with Industrial Activity (the "2008 MSGP")". The 2008 MSGP has specific numeric effluent limitations based upon Standard Industrial Classification ("SIC") codes. Furthermore, these SIC code based benchmark values are reiterated and incorporated into the Industrial Stormwater Permit. *See* Industrial Stormwater Permit § XI(B) Tables 1-2. Notably, Western Tube is classified as falling under SIC Code 3317, relating to steel pipe and tubes, requiring it to be within numerical effluent limitations for (i) pH; (ii) Oil and Grease; (iii) Total Suspended Solids; (iv) Total Aluminum; and (v) Total Zinc. Furthermore, as previously stated, and in clear violation of the terms of the Industrial Stormwater Permit, Western Tube has consistently reported benchmark exceedances and/or failed to report testing results for any applicable effluent limitation in their annual reports for the past five (5) annual reporting periods. *See* Attachments 2, 3. Therefore, the data in Attachment 2 indicates that Western Tube's monitoring program has not effectively identified or responded to compliance problems at the Facility or resulted in effective revision of the BMPs in use or the Facility's SWPPP to address such ongoing problems as required by Industrial Stormwater Permit, § XI and/or the Previous Industrial Stormwater Permit § B.

As a part of the MRP, the Industrial Stormwater Permit specifies that Facility operators shall collect a total of four (4) stormwater samples throughout an annual reporting period. Specifically the Industrial Stormwater Permit requires, "The discharger to collect and analyze samples from two (2) Qualifying Storm Events ('QSE's) within the first half of each reporting year (July 1 to December 31), and two (2) QSEs within the second half of each reporting year (January 1 to June 30)." Industrial Stormwater Permit § XI B(2).[10] Furthermore, should facility operators fail to collect samples from the first storm event of the wet season, they are still required to collect samples from two other storm events during the wet season, and explain in the annual report why the first storm event was not sampled. *Id.* Despite this requirement Western Tube has submitted insufficient testing results for the 2013-2014 annual reporting periods, submitting QSE testing results for less than the required two (2) QSEs or four (4) QSEs under the Previous Industrial Stormwater Permit and Industrial Stormwater Permit, respectively. Moreover, Western Tube has failed to adequately explain why such sampling was not included.

The Industrial Stormwater Permit also requires dischargers to include laboratory reports with their Annual Reports submitted to the Regional Board. *See* Industrial Stormwater Permit, Fact Sheet § O and/or Previous Industrial Stormwater Permit § B(14). Notably, Western Tube has not submitted laboratory reports for the 2013-2014 annual reporting period showing testing for a required second QSE under the Previous Industrial Stormwater Permit. Additionally, Western Tube has failed to adequately explain why such sampling was not included.

As a result of Western Tube's failure to adequately develop and/or implement an adequate MRP at the Facility, Western Tube has been in daily and continuous violation of the Industrial Stormwater Permit and the CWA each and every day for the past five (5) years. These violations are ongoing. Western Tube will continue to be in violation of the monitoring and reporting requirement each day that Western Tube fails to adequately develop and/or implement an effective MRP at the Facility. Western Tube is subject to penalties for each violation of the Industrial Stormwater Permit and the CWA occurring for the last five (5) years.

E. Failure to Comply with Level 1 Exceedance Response Action Requirements

When the Industrial Stormwater Permit became effective on July 1, 2015, all permitted facilities were placed into "baseline status" for all parameters listed in Table 2 of the Industrial Stormwater Permit.

[10] Under the Previous Industrial Stormwater Permit, only two samplings per year was required, specifically, from "the first hour of discharge from (1) the first storm event of the wet season, and (2) at least one other storm event in the wet season." *See* Previous Industrial Stormwater Permit § B(5)(a). Of note, Defendants acknowledge this requirement in their most current SWPPP, at p. i.

Industrial Stormwater Permit § XII(B). Permitted facilities are placed into "Level 1 Status" if sampling indicates that an annual or instantaneous NAL exceedance for an applicable pollutant parameter has occurred. Industrial Stormwater Permit § XII(C). Level 1 status commences on July 1 following the reporting year during which the NAL exceedance(s) occurred, and the discharger enters the Exceedance Response Action ("ERA") process. *Id.* The ERA process requires the discharger to conduct an evaluation, assisted by a Qualified Industrial Storm Water Practitioner (a "QISP"), of the industrial pollutant sources at the facility that are or may be related to the NAL exceedance(s) by October 1 following the commencement of Level 1 Status. *Id.* The evaluation must also include the identification of the "corresponding BMPs in the SWPPP and any additional BMPs and SWPPP revisions necessary to prevent future NAL exceedances and to comply with the requirements of the General Permit." *Id.* Furthermore, the Industrial Stormwater Permit states, "Although the evaluation may focus on the drainage areas where the NAL exceedance(s) occurred, all drainage areas shall be evaluated." *Id.*

Based upon the Level 1 status evaluation, a discharger is required, as soon as practicable but no later than January 1 following the commencement of Level 1 status, to prepare a Level 1 ERA Report. Industrial Stormwater Permit § XII(C)(2). The Level 1 ERA Report must be prepared by a QSIP and include a summary of the Level 1 ERA evaluation and a detailed description of the SWPPP revisions and any additional BMPs for each parameter that exceeded an NAL. *Id.* The SWPPP revisions and additional BMP development and implementation must also be completed by January 1 following the commencement of level 1 status, and the Level 1 status discharger is required to submit via SMARTS the Level 1 ERA Report certifying the evaluation has been conducted, and SWPPP revisions and BMP implementation have been completed. *Id.* The certification is also required to provide the QISP's identification number, name, and contact information no later than January 1 following commencement of level 1 status. *Id.*

A permitted discharger's Level 1 status for a parameter will return to Baseline status if a Level 1 ERA report has been completed, all identified additional BMPs have been implemented, and results from four (4) consecutive QSEs that were sampled subsequent to BMP implementation indicate no additional NAL exceedances for that parameter. Industrial Stormwater Permit § XII(C)(2)(b). A permitted discharger will enter "Level 2 status" if there are any NAL exceedances for the same parameter when the discharger is in Level 1 status. Industrial Stormwater Permit § XII(D).

Western Tube's Facility had NAL annual average and or instantaneous exceedances for pH and Zinc during the 2015-2016 Annual Reporting period that resulted in Level 1 status for the Facility. The additional BMPs identified in Western Tube's submitted Level 1 ERA Report were to be completed by November 16, 2016 as per the Level 1 ERA Report, however sampling conducted by Western Tube throughout the 2016-2017 Annual Reporting period indicate that the facility continues to discharge stormwater containing impermissibly high levels of Zinc. As such, rather than conducting a thorough evaluation to identify the BMPs in the SWPPP that correspond to the NAL exceedances at the Facility, and identify what additional BMPs are needed to prevent future NAL exceedances, Western Tube submitted an inadequate Level 1 ERA report that is ineffective and does not comply with the Industrial Stormwater Permit.

As a result of Western Tube's failure to adequately develop and/or implement an adequate Level 1 ERA at the Facility, Western Tube has been in daily and continuous violation of the Industrial Stormwater Permit and the CWA each and every day for the 2016-2017 annual reporting period, continuing a pattern of violations stretching back at least five (5) years. These violations are ongoing. Western Tube will continue to be in violation of the monitoring and reporting requirement each day that Western Tube fails to adequately develop and/or implement an effective Level 1 ERA at the Facility. Western Tube is subject to penalties for each violation of the Industrial Stormwater Permit and the CWA occurring for the last five (5) years.

F. Unpermitted Discharges

Section 301(a) of the CWA prohibits the discharge of any pollutant into waters of the United States unless the discharge is authorized by a NPDES Permit issued pursuant to Section 402 of the CWA. *See* 33 U.S.C. §§ 1311(a), 1342. Western Tube sought coverage for the Facility under the Industrial

Stormwater Permit, which states that any discharge from an industrial facility not in compliance with the Industrial Stormwater Permit "must be either eliminated or permitted by a separate NPDES permit." Industrial Stormwater Permit, § III; Previous Industrial Stormwater Permit, Order Part A(1). Because Western Tube has not obtained coverage under a separate NPDES permit and has failed to eliminate discharges not permitted by the Industrial Stormwater Permit, each and every discharge from the Facility described herein not in compliance with the Industrial Stormwater Permit has constituted and will continue to constitute a discharge without CWA Permit coverage in violation of section 301(a) of the CWA, 33 U.S.C. § 1311(a)

IV. PERSON RESPONSIBLE FOR THE VIOLATIONS

Western Tube & Conduit Corporation is the person responsible of the violations at the Facility described above.

V. NAME AND ADDRESS OF NOTICING PARTY

Personal Privacy 6
San Pedro, CA 90731
Personal Privacy 6

VI. COUNSEL

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VII. REMEDIES

Personal Privac intends, at the close of the 60-day notice period or thereafter, to file a citizen suit under CWA section 505(a) against Western Tube for the above-referenced violations. Personal Privacy will seek declaratory and injunctive relief to prevent further CWA violations pursuant to CWA sections 505(a) and (d), 33 U.S.C. § 1365(a) and (d), and such other relief as permitted by law. In addition, Personal Privacy will seek civil penalties pursuant to CWA section 309(d), 33 U.S.C. § 1319(d), and 40 C.F.R. § 19.4, against Western Tube in this action. The CWA imposes civil penalty liability of up to $37,500 per day per violation for violations occurring after January 12, 2009. 33 U.S.C. § 1319(d); 40 C.F.R. § 19.4. Personal Privac will seek to recover attorneys' fees, experts' fees, and costs in accordance with CWA section 505(d), 33 U.S.C. § 1365(d).

As noted above, Personal Privacy and his Counsel are willing to meet with you during the 60-day notice period to discuss effective remedies for the violations noted in this letter. Please contact me to initiate these discussions.

Sincerely,

Evan J. Smith, Esquire
esmith@brodskysmith.com
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ATTACHMENT 1: EPA BENCHMARKS AND WATER QUALITY STANDARDS FOR DISCHARGES TO FRESHWATER

A. EPA Benchmarks, 2008 Multi-Sector General Permit ("MSGP")

Parameter	Units	Benchmark Value	Source
pH	pH Units	Less than 6.0 Greater than 9.0 (Instantaneous)	2008 MSGP; Industrial Stormwater Permit § XI(B) Tables 1-2
Oil & Grease	Mg/L	25 (Instantaneous) 15 (Annual)	2008 MSGP; Industrial Stormwater Permit § XI(B) Tables 1-2
Total Suspended Solids	Mg/L	400 (Instantaneous) 100 (Annual)	2008 MSGP; Industrial Stormwater Permit § XI(B) Tables 1-2
Aluminum, Total	Mg/L	0.75 (Annual)	2008 MSGP; Industrial Stormwater Permit § XI(B) Tables 1-2
Zinc, Total	Mg/L	0.26** (Annual)	2008 MSGP; Industrial Stormwater Permit § XI(B) Tables 1-2

** The NAL is the highest value used by the U.S. EPA based on their water hardness.

B. Water Quality Standards – Discharge Limitations and Monitoring Requirements (40 CFR Part 131.38 (California Toxics Rule or CTR), May 18, 2000)

Parameter	Units	Water Quality Objectives		Source
		4- Day Average	1-Hr Average	
Lead	Mg/L	0.0081	0.21	**40 CFR Part 131.38**
Zinc	Mg/L	0.081	0.090	**40 CFR Part 131.38**

ATTACHMENT 2: TABLE OF EXCEEDENCES FOR WESTERN TUBE & CONDUIT CORP.

The following table contains each stormwater sampling result which exceeds EPA Benchmarks and/or causes or contributes to an exceedance of CFR and/or Basin Plan Water Quality Standards. All EPA Benchmarks and CFR and/or Basin Plan Water Quality Standards are listed in Attachment 1. All stormwater samples were reported by the Facility during the past five (5) years.

Reporting Period	Sample Date	Parameter	Result	Unit
2016-2017	1/19/2017	Zinc	0.443	Mg/L
2016-2017	1/19/2017	Zinc	2.33	Mg/L
2016-2017	1/5/2017	Zinc	1.67	Mg/L
2016-2017	12/30/2016	Zinc	1.4	Mg/L
2016-2017	12/16/2016	Zinc	5.33	Mg/L
2016-2017	11/20/2016	Zinc	0.36	Mg/L
2015-2016	5/6/2016	Zinc	0.328	Mg/L
2015-2016	5/6/2016	Zinc	11.4	Mg/L
2015-2016	5/6/2016	Zinc	0.291	Mg/L
2015-2016	5/6/2016	Zinc	0.997	Mg/L
2015-2016	3/11/2016	pH	9.29	S.U.
2015-2016	3/11/2016	Zinc	0.27	Mg/L
2015-2016	3/11/2016	Zinc	1.41	Mg/L
2015-2016	1/5/2016	Zinc	8.34	Mg/L
2015-2016	1/5/2016	Aluminum	0.841	Mg/L
2015-2016	1/5/2016	Zinc	3.73	S.U.
2015-2016	1/5/2016	Zinc	1.48	Mg/L
2015-2016	1/5/2016	Zinc	1.38	Mg/L
2015-2016	12/22/2015	Zinc	2.78	Mg/L
2015-2016	12/22/2015	Zinc	2.39	Mg/L
2015-2016	12/22/2015	Zinc	0.634	Mg/L
2015-2016	12/22/2015	Zinc	1.07	Mg/L
2014-2015	5/8/2015	Zinc	20.6	Mg/L
2014-2015	5/8/2015	Aluminum	0.864	Mg/L
2014-2015	5/8/2015	Zinc	10.9	Mg/L
2014-2015	5/8/2015	Zinc	2.49	Mg/L
2014-2015	5/8/2015	Zinc	2.64	Mg/L
2014-2015	12/2/2014	O&G	19.1	Mg/L
2014-2015	12/2/2014	Aluminum	1.7	Mg/L
2014-2015	12/2/2014	Zinc	16	Mg/L
2014-2015	12/2/2014	Aluminum	1.2	Mg/L
2014-2015	12/2/2014	Zinc	10	Mg/L
2014-2015	12/2/2014	Aluminum	1.9	Mg/L
2014-2015	12/2/2014	Zinc	5.1	Mg/L
2014-2015	12/2/2014	Zinc	4.81	Mg/L
2013-2014	12/19/2013	Zinc	68	Mg/L
2013-2014	12/19/2013	TSS	155	Mg/L
2013-2014	12/19/2013	Aluminum	1.6	Mg/L
2013-2014	12/19/2013	Zinc	24	Mg/L
2013-2014	12/19/2013	TSS	183	Mg/L
2013-2014	12/19/2013	Aluminum	1.3	Mg/L
2013-2014	12/19/2013	Zinc	8.6	Mg/L
2013-2014	12/19/2013	Zinc	3.4	Mg/L
2012-2013	1/24/2013	Zinc	6.7	Mg/L
2012-2013	1/24/2013	Aluminum	2	Mg/L

2012-2013	1/24/2013	Zinc	6.6	Mg/L
2012-2013	1/24/2013	Zinc	1.3	Mg/L
2012-2013	1/24/2013	Zinc	1.8	Mg/L
2012-2013	10/11/2012	TSS	291	Mg/L
2012-2013	10/11/2012	Aluminum	5.8	Mg/L
2012-2013	10/11/2012	Zinc	110	Mg/L
2012-2013	10/11/2012	TSS	224	Mg/L
2012-2013	10/11/2012	Aluminum	3.5	Mg/L
2012-2013	10/11/2012	Zinc	22	Mg/L
2012-2013	10/11/2012	TSS	137	Mg/L
2012-2013	10/11/2012	Aluminum	4.8	Mg/L
2012-2013	10/11/2012	Zinc	10	Mg/L
2012-2013	10/11/2012	TSS	397	Mg/L
2012-2013	10/11/2012	Aluminum	8.3	Mg/L
2012-2013	10/11/2012	Zinc	16	Mg/L
2011-2012	12/12/2011	Zinc	38.2	Mg/L
2011-2012	12/12/2011	Zinc	13.1	Mg/L
2011-2012	12/12/2011	Aluminum	0.769	Mg/L
2011-2012	12/12/2011	Zinc	9.91	Mg/L
2011-2012	12/12/2011	Aluminum	1.02	Mg/L
2011-2012	10/4/2011	pH	5.91	S.U.
2011-2012	10/4/2011	Aluminum	0.979	Mg/L
2011-2012	10/4/2011	Zinc	20	Mg/L
2011-2012	10/4/2011	Zinc	21.1	Mg/L
2011-2012	10/4/2011	Zinc	11.3	Mg/L

* Western Tube has failed to submit testing results and/or laboratory results for a second QSE in the 2013-2014 annual reporting periods.

* Western Tube has recorded annual and/or instantaneous exceedances for Zinc in the 2011-2012 annual reporting period; TSS, Aluminum, and Zinc in 2012-2013 annual reporting period; TSS, Aluminum, and Zinc in the 2013-2014 annual reporting period; Aluminum and Zinc in the 2014-2015 annual reporting period; pH and Zinc in the 2015-2016 annual reporting period, and Zinc in the most recent 2016-2017 annual reporting period.

ATTACHMENT 3: ALLEGED DATES OF EXCEEDANCES BY WESTERN TUBE & CONDUIT CORP.
January 1, 2012 – July 28, 2017

Days with precipitation two-tenths of an inch or greater, as reported by NOAA's National Climatic Data Center, Station(s): Long Beach Daugherty Field, CA US, GHCND:USW00023129, when a stormwater discharge from the Facility is likely to have occurred. http://www.ncdc.noaa.gov/cdo-web/search

2012	2013	2014	2015	2016	2017
1/21	1/24	2/27	1/10	1/5	1/5
1/23	3/8	2/28	1/11	1/6	1/9
2/15	5/6	3/1	3/2	1/7	1/11
3/17	11/29	11/30	4/7	1/31	1/12
3/18	12/19	12/2	5/14	2/17	1/19
3/25		12/3	7/18	3/6	1/20
4/11		12/12	9/15	3/11	1/22
4/13		12/16	12/22	10/17	2/3
4/25		12/17		11/20	2/6
10/11				11/21	2/10
11/29				11/26	2/17
11/30				12/15	5/7
12/3				12/16	
12/3				12/21	
12/24				12/22	
				12/23	
				12/30	